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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह जलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (III) PART II—Section 3—Sub-section (III)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग
आदेश

नई दिल्ली, 7 जनवरी, 1991

भा. प्र. 17.—निर्वाचन आयोग का समाधान हो गया है कि
फरवरी 1990 में पांडिचेरी विधान सभा के लिए हुए साधारण निर्वाचन
में संघ राज्य-क्षेत्र पांडिचेरी के 15-मन्नदीपेठ विधान सभा निर्वाचन
क्षेत्र से निर्वाचन लड़ने वाले एक अभ्यर्थी श्री कृष्णामूर्ति, कलायुमेड,
पुदुनगर, काट्टेरी कुप्पम पोस्ट, पांडिचेरी लोक प्रतिनिधित्व अधिनियम,
1951 तथा उसके अधीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन
अर्थों का कोई भी लेखा वांछित नहीं किया है,

और, उक्त अभ्यर्थी ने सम्यक् अवसर दिए जाने पर भी अपनी
असफलता के लिए कोई कारण प्रथवा स्पष्टीकरण नहीं दिया है, और
निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास असफलता
के लिए कोई पर्याप्त कारण या न्यायोचित नहीं है,

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के
अनुसरण में, उक्त अभ्यर्थी श्री कृष्णामूर्ति को संसद के किसी भी सदन के
या राज्य की विधान सभा प्रथवा विधान परिषद के सदस्य चुने जाने
और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए
निराहित घोषित करता है।

ELECTION COMMISSION OF INDIA
ORDER

New Delhi, the 7th January, 1991

O.N. 17.—Whereas the Election Commission is satisfied
that Shri Krishnamurthy, Kalathumedu, Pudunagar, Katteri-
kuppam Post, Pondicherry, a contesting candidate at the
General Election to the Legislative Assembly held in Febru-
ary, 1990 from 15-Mannadipeth legislative assembly con-
stituency in the Union Territory of Pondicherry has failed to
lodge the account of his election expenses at all as re-
quired by the Representation of the People Act, 1951 and
the Rules made thereunder;

And whereas the said candidate, even after due oppor-
tunity, has not given any reason or explanation for the
failure and the Election Commission is satisfied that he has
no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said
Act, the Election Commission hereby declares the said can-
didate Shri Krishnamurthy to be disqualified for being chosen
as, and for being, a member of either House of Parliament
or of the Legislative Assembly or Legislative Council of a
State for a period of three years from the date of this
order.

[संख्या 76/पांडि./91]

[No. 76/POND./91]

आदेश

घा. घ. 18 :—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट 1989 में हुए लोक सभा साधारण निर्वाचन के लिए जो स्तम्भ (3) में तत्स्थानी रूप से विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वर्धन बनाए गए नियमों द्वारा प्रपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण प्रपत्र स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यर्थित्वों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यावहारिक नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों की संसद के किसी भी सदन के या किसी राज्य की विधान सभा प्रथम विधान परिषद् की सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्रम. सं. निर्वाचन का विवरण	संसदीय निर्वाचन क्षेत्र की क्रम संख्या और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता का कारण
1	2	3	4
1. लोक सभा का साधारण निर्वाचन 1989	2—दक्षिण दिल्ली	1. श्री धनी राम सेजवाल 203अमृतपुरी (बी) गली, ईस्ट प्राक कैंपस, नई दिल्ली।	लेखा दाखिल नहीं किया।
2. —वही—	—वही—	2. (नेवर) के. सी. कर्की, डी 4/153, अम्बरक एम्कलेज, नई दिल्ली।	—वही—
3. —वही—	—वही—	3. बाबूलाल सागर, सी-46, राजपार्क, देवली, नई दिल्ली।	—वही—
4. —वही—	—वही—	4. श्री बाल चन्द्र, श्रीनिवासपुरी, नई दिल्ली।	—वही—
5. —वही—	—वही—	5. श्री मदन लाल कुरामा, 8692, गीदी पुरा, दिल्ली।	—वही—
6. —वही—	—वही—	6. श्री मोहम्मद मुरतजा, इम्लू जैड 3, बसई दारापुर, नई दिल्ली।	—वही—
7. —वही—	—वही—	7. श्री मोहम्मद बसीम, 8/2, गफूर बस्ती, जामिया नगर, नई दिल्ली।	—वही—
8. —वही—	—वही—	8. श्री सान्वा गोपीनाथ, 17 ए. एस. घाई. जी., डी. डी. ए. फ्लैट्स, हरी नगर, नई दिल्ली।	—वही—
9. —वही—	—वही—	9. श्री सुभाष चौधरी, जी. 17/7ए, राजीरी गार्डन, नई दिल्ली।	—वही—
10. —वही—	—वही—	10. श्री सुभाष चन्द्र, एफ. ए. 130 का, मानसरोवर गार्डन, नई दिल्ली।	—वही—

[संख्या 76/दिल्ली-सो. सं./91]

आदेश से,
राम किशोर, प्रवर सचिव

ORDER

O. N. 18 .— Whereas the Election Commission of India is satisfied that the contesting candidates specified in column (4) of the Table below at the election to the House of the People held in November, 1989 as specified in column (2) and held from the constituency correspondingly specified in column (3) against their names have failed to lodge account of their election expenses, as shown in column (5) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made there under;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representation, made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10-A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order;

TABLE

Sl. Particular of Election No.	S. No. & Name of Parliamentary Constituency	Name and Address of the Candidates	Reasons for Disqualification
1	2	3	4
1. General Election to the House of the People, 1989	2-South Delhi	1. Shri Dhani Ram Sejwal, 203, Amritpuri (B) Garhi, East of Kailash, New Delhi.	Account not lodged.
2. -do-	-do-	2. Major K. C. Bakshi, B-4/153, Safdarjang Enclave, New Delhi.	-do-
3. -do-	-do-	3. Shri Babu Lal Sagar, C-46, Raju Park, Devli, New Delhi.	-do-
4. -do-	-do-	4. Shri Bal Chander, Siriniwas Puri, New Delhi.	-do-
5. -do-	-do-	5. Shri Madan Lal Khurana, 8692, Shidipura, New Delhi.	-do-
6. -do-	-do-	6. Mohd. Murtaza, WZ-3, Basai Dara Pur, New Delhi.	-do-
7. -do-	-do-	7. Mohd. Waseem, 8/2, Gafoor Basti, Jamia Nagar, New Delhi.	-do-
8. -do-	-do-	8. Shri Santha Gopinath, 17-A, LIG, DDA Flats, Hari Nagar, New Delhi.	-do-

1	2	3	4	5
9. General Election to the House of People, 1989	2—South Delhi	9. Shri Subhash Chopra, G-17/7A, Rajouri Garden, New Delhi.	Account not lodged.	
10. -do-	-do-	10. Shri Subhash Chand, FA 130/B, Mansarovar Garden, New Delhi.	do	

[No. 76/DL—HP/90]

By Order,

Ram Kishan, Under Secy.

आदेश

नई दिल्ली, 7 जनवरी, 1991

भा. अ. 19.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट लोक सभा निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व नियम, 1951 तथा तद्विषय बनाए गए नियमों द्वारा प्रेषित उक्त सारणी के स्तम्भ (5) में यथा वंशित अपने निर्वाचन व्ययों का लेखा प्रेषित रीति से दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण, न स्पष्टीकरण ही दिया है उनके द्वारा दिए गए प्रत्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात्, निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता लिए कोई पर्याप्त कारण या व्यायोजित्य नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के प्रवृत्त में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहिस्त घोषित करता है।

सारणी

क्र. सं०	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्र.सं० और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहिता का कारण
1	2	3	4	5
1.	केरल राज्य से लोक सभा के लिए साधारण निर्वाचन 1989	1. कासरगोड	3. श्री ए. के. अब्दुल रहमान पाइनेक्कड सुपुल के० पी० अब्दुल खादर हाजी, स्थान पाइनेक्कड, पो. भा. कनहुगुड, गांव होसन्नय तासुक, (केरल)	लेखा दाखिल नहीं किया।
	—वही—	—वही—	2. श्री टी. एम. सेबासतिमन, सुपुल श्री मायार्ड, बेक्कल हाउस, केबुनथाला, बमायेगी. पो. भा., 670511	लेखा समय से भीतर और रीति से दाखिल नहीं किया।
			3. श्री साहसन एम. जोसे सुपुल एम. जोसाफ, मेडोना, बालीककारा, पो. भा. बाबन 670301	
2.	—वही—	4. कोलीकोट	श्री कम्मकक्काथ घलीकोया, मकान नं. 583/4, कोया रोड, पो. भा. वेस्टहिल, कोलीकोट, (केरल)	लेखा दाखिल नहीं किया।
3.	—वही—	6. पोन्नानी	श्री बालीककोट्टिल, हिरकुटी पकारा, पो. भा. तामासूर, मल्लापूरम जिला (केरल)	—वही—

1	2	3	4	5
4. केरल राज्य से लोक सभा के लिए साधारण निर्वाचन, 1989	7—पालघाट		1. श्री कालिम मोहम्मद कुट्टी सुपुज मोहम्मद कुट्टी, नारीकुथा मस्जिद के समीप, पाराकुन्नुम, पो. आ. पालघाट (केरल)	लेखा दाखिल नहीं किया।
			2. श्री टी. पी. जोय थालापिल्ली, चोराकोडे, पो. आ. पंक्कम्बाक पालघाट, (केरल)	—वही—
5. —वही—	10—मुकुन्दपुरम		1. श्री बेबी पोडलोसे एम, मनिकाथुराम्बिल, बेन्नूर, मेलानूर पो. आ. त्रिषूर, (केरल)	—वही—
			2. श्री के. के. राजन, कालापिल हाउस परपाकाट, पाळूर पो. आ., केरल	—वही—
6. —वही—	14—इरुक्की		श्री ओशी वगिस, पुथे तकदाथिल थलाकोडे, इलेमबेसम, पो. आ. केरल।	—वही—

[सं. 78/केरल/80]

प्रादेश से,

सी. एल. रोज, सचिव

ORDER

New Delhi, the 7th January, 1991

O. N. 19—Whereas the Election Commission is satisfied that the contesting candidate specified in column (4) of the Table below at the election to the House of the People specified in column (2) and held from the constituency specified in column (3) against his name has not lodged the account in manner as shown in column (5) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made there under;

And, whereas, the said candidate has not furnished any reason or explanation for the said failure even after due notice, the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the person specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S. No name of constituency	Name and Address of contesting candidate	Reasons for dis-qualification
1	2	3	4	5
1.	General Election to the House of the People, 1989 from Kerala State.	1-Kasaragod	1. Shri E.K. Abdul Rahiman Padnekkad, S/O K. P. Abdul Khader Haji, Residing at Padnekkad, P.O. Kanhangad, Village, Hosdrug Taluk, Kerala.	Account not lodged
			2. Shri T.M. Sebastian, S/o. Mathai, Thekkel House, Kavunthala, Thayeni P.O., 670511	-do-

1	2	3	4	5
	General Election of the House of the People, 1989 from Kerala State		3. Shri Simon M. Jose S/o M. Joseph, Medona, Pallikkara P.O. Thavam, 670301	Account not lodged in time and manner.
2.	-do-	4-Calicut	Shri Kammakakkath Alikoya, House No. 583/4, Koya Road, P.O. West Hill, Kozhikode, Kerala.	Account not lodged
3.	-do-	6-Ponnani	Shri Vallikkattil Hyderkutty, Pakara P.O. Tanalur, Malappuram Distriot, Kerala.	do
4.	-do-	7-Palghat	1. Shri Kassim Mohammedkutty S/o Mohammedkutty, Near Narikkuthy Mosque, Parakunnam P.O., Palghat, Kerala. 2. Shri T.P. Joy, Thalappilly, Chorakkode, P.O. Peruvemba, Palghat, Kerala.	-do- -do-
5	-do-	10-Mukunda- puram	1. Shri Baby Poulose, M., Manikkathuparambil, Vennoor, Meladoor, P.O., Trichur, Kerala. 2. Shri K.K. Rajan, Kalathil House, Parayakad, Parur P.O., Kerala.	-do-
6.	-do-	14-Idukki	Shri Jose Varghese, Puthenkandathil, Alakode, Elemdesom P.O., Kerala.	-do-

[No. 76/KL/90]

By Order,

C. L. ROSE, Secy.

नई दिल्ली, 7 जनवरी, 1991

आ. नं. 20—बीक प्रतिनिधित्व अधिनियम, 1951 (1951 का. 43) की धारा 106 के प्रावधानों से, निर्वाचन आयोग 1990 की निर्वाचन प्रणाली में 1. अ. उड़ीसा उच्च न्यायालय, कटक के तारीख 20.9.1990 के आदेश की अनुसूचना प्रकाशित करता है।

[स. 82/उड़ीसा को. स. 1/90]

आदेश से,

बलवन्त सिंह, अधिवक्ता

New Delhi, the 7th January, 1991

O.N. 30.9.1990 pursuant to section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement of the High Court of Orissa dated 20th September, 1990 in Election Petition No. 1 of 1990.

IN THE HIGH COURT OF ORISSA, CUTTACK

Election Petition No. 1 of 1990

In the matter of an application under Section 81 of the Representation of the People Act, 1951

Sri Suriya Narayan Patro

Petitioner.

Versus-

Shri Gopinath Gajapati Narayan Deo and Others.

Opp. Parties.

For petitioner—M/s. C. V. Murty, C. M. K. Murty & S. K. Rath.

For opp. parties—M/s. B. M. Pattnaik, P. K. Choudhury & S. Mohapatra

(for respondent No. 1)

PRESENT

The Honourable Mr. Justice S. C. Mohapatra.

Date of hearing : 30th June, 1990.

Date of judgment : 20th September, 1990.

S. C. MOHAPATRA, J.—Petitioner was a candidate for election to the House of People from 11-Berhampur Parliamentary Constituency in Orissa. Opposite party Nos. 1 to 3 were the other three candidates. Opposite party no. 1 having been declared elected, petitioner has filed this application under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') for declaring election of opposite party No. 1 as void.

2. On basis of decision on recommendation of Election Commission by order of the President, Central Government called upon all Parliamentary Constituencies except those within State of Assam to elect members of House of the People by publishing notification dated the 23rd October, 1989 published in the Gazette of India. Extraordinary Part-II Section 3(i) dated the 23rd October, 1989 as required under Section 14(2) of the Act. In the same part of the Gazette of India. Extraordinary in Section 3(iii) Election Commission published the programme of Election in 11-Berhampur Parliamentary Constituency as required under Section 30 of the Act. Much prior to it, on 18th October, 1989, Chief Election Officer sent a message (Ext. 3) to all Collectors and all District Election Officers that Election Commission has announced on 17th October evening about General Election to Lok Sabha. Referring to the meeting of all District Election Officers where Chief Election Officer advised to start preparation Chief Election Officer instructed them the nature of alertness required by them and steps already taken by him. Election programme was also intimated. On 19th October, 1989 another message (Ext. 4) was sent by Chief Election Officer,

Orissa to all Collectors and District Election Officers instructing how public notice required under Section 31 of the Act is to be issued. On 19th October, 1989 another message was issued by the Chief Election Officer, Orissa (Ext. 6) modifying the last date of receipt of nomination to be 30th October, 1989. On 19th October, 1989, a circular (Ext. 8) was issued by the Chief Electoral Officer, Orissa intimating all Collectors (Returning Officers) and District Election Officers about the programme and gave instructions. This was received by Collector, Chhatrapur on 23rd October, 1989 who marked it to District Election Officer (Ext. 8/1). Receiving message of the 18th (Ext. 3), a file was opened and office note was submitted in it, on basis of which District Election Officer submitted a note on 20th October, 1989 (Ext. A) to the Collector along with copies of public notices to be issued in Form I both in English and Oriya for signature of the Collector who is the Returning Officer suggesting that the said notices are to be published in the notice boards of various offices. Collector in his note on the same day (Ext. A/1) accepted the proposal making a slight variance. Collector also signed the copies of notices in Form I in English and Oriya. On receipt of the file, Officer-in-Charge of Election (D.W. 1) submitted a note (Ext. A/1) with a draft letters (Ext. 5) which was approved with correction by the District Election Officer in token of approval of which he signed in the note sheet (Ext. A/2). Notice were published in the notice Boards of various offices. On 23rd October, 1989 a message was drafted to be sent by District Election Officer that public notices in Form No. 1 were published on 23rd October, 1989. This was sent on 24th October, 1989 and a post copy was sent on that day (Ext. F). Informations were received by the District Election Officer from various offices about publication of public notice (Exts. F to I). So far as public notice in the notice board of the Collectorate, copies of such notices in Form I in English and Oriya were kept in the file (Exts. C & D) where Officer-in-Charge (D.W. 1) endorsed that such notices were pasted on the notice board in his presence on 23rd October, 1989.

3. Seven candidates filed their nominations. They are: petitioner, Opposite party Nos. 1 to 3, Binod Agarwalla, R. Varahalu and Kailash Acharya. Last three candidates withdrew their nominations. Thus, only four remained to contest. In the election, opposite party No. 1 secured 2,32,082 votes and was declared elected. Petitioner secured 2,17,336 votes, opposite party No. 2 secured 11,279 votes and opposite party No. 3 secured 9,618 votes. Thus, opposite party No. 1 was declared elected.

4. In the aforesaid background, petitioner has called in question the election of opposite party No. 1 in this application filed in this court under Section 81 of the Act annexing sixteen documents marked by him as Annexures-1 to 16. Opposite party No. 1 has filed his written statement contesting the facts and grounds of challenge. Two documents have been annexed which have been marked by opp. party No. 1 as Annexures A/1 and B/1 to the written statement. Opposite party Nos. 2 and 3 have remained ex parte despite valid service of notice.

5. Petitioner has challenged the election of opposite party No. 1 on two grounds. They are : (1) Entire process of election is vitiated on account of publication of general notice under section 31 of the Act on 20th October, 1989 before the notification of the Central Government under Section 14(2) of the Act on 23rd October, 1989 and publication of notification of the Election Commission under Section 30 of the Act on 23rd October, 1989; and (2) Opposite party No. 1 is disqualified to be a candidate on account of subsisting contract entered into by him with Central Government in course of his trade and business for supply of salt as per terms of the lease (Ext. 1) of land for manufacture of salt.

6. While opposite party No. 1 admits that he has taken lease of land as per Ext. 1 for manufacture of salt, his contest is that the terms of the lease deed cannot be construed as a contract for supply of goods to disqualify him under Section 9A of the Act, and public notice under Section 31 of the Act was issued on 23rd October, 1989, after the notifications under Sections 14(2) and 30 of the Act.

7. Neither petitioner nor opposite party No. 1 examined themselves as witnesses. While petitioner examined one witness, opposite party No. 1 also examined one witness. Besides, certified copy of the lease deed was marked as Ext. 1 on admission of the parties. Other documents were proved and marked as per law.

8. In view of the assertions and counter assertions in the application and the written statement, following issues were settled :

- (1) Whether the averment in the Election petition that Returning Officer signed and published a notice under Section 31 of the Representation of the People Act, 1951 on 20th October, 1989 is correct.
- (2) Whether signing of the notice U/s. 31 of the Representation of the People Act, 1951 is illegal even though the said notice was published on 23rd October, 1989.
- (3) Whether signing of such notice U/s. 31 of the Representation of the People Act, 1951 by the Returning Officer has materially affected the result of Election in terms of Section 100(1)(d)(iv) of the Representation of the People Act.
- (4) Whether Clause 20 of the agreement between respondent No. 1 and the President of India is subsisting contract for supply of goods.
- (5) Whether the election of respondent No. 1 is liable to be set aside.
- (6) Whether the election petition is liable to be dismissed as barred by limitation.
- (7) Whether the Election Petition is liable to be dismissed for non-joinder of necessary parties."

FINDINGS

Issue Nos. 1 to 3

9. These issues relate to giving public notice of the intended election under Section 31 of the Act. For deciding these issues, it is to be found :

- (a) Whether public notice was given on 20th October, 1989 as claimed by petitioner on 23rd October, 1989 as asserted by opposite party No. 1; and
- (b) If it is found that notice was given on 20th October, 1989 what is its effect on the election.

10. There is no dispute that notification of the President as required under Section 14(2) of the Act was published in an extraordinary issue of gazette of India Part II Section 3(ii) dated 23-10-1989. In the same extraordinary issue of gazette notification dated 23-10-1989 by the Election Commission U/s. 30 of the Act was published. Validity of these notifications are not challenged by either party. Case of the petitioner is that process of election having started only on publication of notification U/s. 14(2) of the Act on 23-10-1989, giving of public notice by the Returning Officer U/s. 31 of the Act on 20-10-1989 vitiates the entire process of election which becomes invalid and void in absence of compliance of precondition for election.

11. In the election petition, petitioner filed one of the original notices U/s. 31 which has been proved and marked as Ext. 2. It has been asserted in ground No. (V) in paragraph-11 of the petition.

"petitioner has obtained the original notice affixed in the Notice Board and has filed the same as Annexure-1 which does not contain such endorsement".

This original was filed on 24-4-1990 which has been marked as Ext. 2 being proved by P.W.1 who stated that he obtained Ext. 2 from the Collector on 20-10-1989 and handed over the same to the petitioner at Berhampur. Thus, assertion of petition in the petition on verification and affidavit is not supported by P.W.1.

12. Notice on the notice board of the public office is property and removing the same from the notice board without permission or authority may in certain circumstances be an offence. Whether it is offence or not, obtaining the same by a candidate who is intending to be elected as Member of the House of People does not speak well of the candidate. Even if, he has not himself got it, he ought not to have encouraged any other person to remove the same. Such person who removes notice from public notice board, does great disservice to the persons for whom the notice is meant. No political party or a person belonging to a political party should associate himself with such person in any manner which reflects upon the party itself. I am making this observation in this election dispute to appreciate the case of petitioner that public notice U/s. 31 was published on 20-10-89. Since possession of Ext. 2 as asserted in the petition is not proved by any evidence, I am not inclined to accept assertion made on verification and affidavit when petitioner has preferred not to offer himself for cross-examination by examining himself.

13. According to P.W.1, he obtained Ext. 2 from the Collector when he was signing the copies. Signing copies on 20-10-1989 is not giving notice. This is only a preparation for giving notice. D.W.1 has clearly stated that copies of public notices in Form No. I in English and Oriya were signed on 20-10-1989. Even if they were sent for being given in notice boards, that act is only preparation. Such preparation earlier to the publication of notification U/s. 14(2) and 30 are not in any manner bad to vitiate the election itself.

14. The then Collector was summoned through special messenger at instance of opposite party No. 1 to give his evidence. If he would have come to the dock, he could have stated the correctness of assertion of P.W.1 that he handed over Ext. 2 to P.W.1. This witness however, avoided to be examined on the ground that he was to attend a meeting at New Delhi. I can only observe that public officers should give more importance to court proceedings and unless their other duties are such important that they can not be deferred or avoided, non-attendance in Court to co-operate for finding out truth, does not speak well of the officer and executive administration itself. However, opposite party No. 1 not having insisted on examining this witness, I am inclined to accept evidence of P.W.1 who is an advocate that the Collector handed over Ext. 2 to him. I can only observe that Collector did not act well in handing over a copy to one individual when he could not have handed over copies to others, if demanded. In such circumstances, refusal, when rules do not require, is the best course to be adopted.

15. As I have come to conclusion, Ext. 2 was obtained by P.W.1 at the stage of preparation and from the same, it cannot be inferred that public notice was issued on 20-10-89. P.W.1 stated that he saw the public notice in the notice board on 20-10-1989. There is no corroboration to this fact. On the other hand Exts. G to J the replies from different offices clearly report the publications to be on 23-10-1989. Endorsement (Exts. C/1 and D/1) of D.W.1 on the office copies of public notices (Exts. C and D) added to his statement that in his presence notices were pasted on the notice board of the Collectorate on the basis of which such endorsements have been made clearly lead to believe that public notices were given on 23-10-1989 as claimed by opposite party No. 1. It is true that there are some corrections in some documents. They may be on account of haste but cannot lead to irresistible conclusion that public notice at different places were given on 20-10-1989.

16. Assuming that public notice was given on 20-10-1989, the same would not vitiate the election. In Section 81, it is provided that an election can be called in question in an application on one or more grounds specified in Section 100(1) and Section 101 of the Act. Case of petitioner does not come under the grounds mentied in Section 101. If at all, the ground of challenge would come under Section 100(1)(d)(iv) of the Act for noncompliance of the provisions of the Act. In order to utilise the same, petitioner is required to prove that the result of the election so far as it concerns a returned candidate is materially affected. Such a case has not been made out. All candidates including petitioner and voters participated in the process of election subsequent to public

notice under Section 31 without any demur. Taking part in the election with such defect if any having a chance to be elected, petitioner ought not to be permitted to allege that the entire process is vitiated when the result has not been materially affected.

17. Even if the notice was issued on 20-10-1989, it continued to have its effect even on 23-10-1989 and thereafter. It can be said to be a notice under Section 31 on and after the notification Under Sections 14(2) and 31 of the Act.

18. In view of aforesaid discussions, Issue Nos. 1 to 3 are answered against the petitioner by finding that public notice under Section 31 of the Act was given on 23-10-1989.

Issue No. 4.

19. This issue is the most vital issue to be answered in the present case. Case of petitioner is that Ext. 1 is a subsisting contract for supply of goods between the opposite party No. 1 and the Central Government. Certified copy of the agreement has been marked as Ext. 1 on admission of both the parties. Clause 20 of the agreement is the material clause relied upon by the petitioner in support of his case. It reads as follows :

"20. the lessor shall be entitled to a lien every year up to 25 per cent of the Salt produced by the lessees in the factory and the lessees shall store at their own expenses and keep in reserve the 25 per cent of the Salt manufactured in the leased land in that season, such salt shall be termed Government reserve. The lessor will have the option to purchase it at such rate as may be decided by the Government of India from time to time for the factory as a whole. The Government reserve stock of the season shall be released for disposal by the lessees as it is replaced by equal quantity of the new salt of the succeeding Season. No change shall be made by the lessees in respect of the space on which salt, so reserved is stored".

20. In respect of this issue, no oral evidence has been adduced. No other documentary evidence is also adduced for the purpose of interpreting clause-20. Thus, from the clause itself read with other clauses, interpretation is to be given to clause 20.

21. Mr. C. V. Murty, learned counsel for the petitioner submitted that supply of salt for consideration in future during subsistence of the lease is clearly envisaged in clause 20. This submission requires careful consideration.

22. According to Mr. Murty, lease agreement (Ext. 1) is one for manufacture and supply of goods i.e. salt. It is a trade and business of petitioner. Manufactured Salt when sold to private parties is a contract of sale under the sale of goods Act. When there is no sale but there is contract for sale of salt to Central Government at a future date to the maximum of 25 per cent of the manufactured Salt. Central Government has a lien over such salt which is called 'Government reserve'. That quantity stock which is not purchased by Government during the year is released with freedom of petitioner to sell to others on condition that from out of the new Salt manufactured, that quantity is replaced in the next year. According to Mr. Murthy, reading the clause in its entirety, reasonable interpretation is that it is a contract for sale of goods.

23. Mr. B. M. Patnaik, learned counsel for opposite party No. 1 submitted that although opposite party No. 1 agreed that in case Government desires, it would purchase 25 per cent of the stock which is called 'Government reserve', there is no completed contract for supply of goods. It is only an offer by the petitioner. Acceptance of Government would arise when it decides to purchase on basis of which it purchases. Mr. Patnaik relied upon the decision of the Supreme Court reported in 26 E.L.R. 310 (C.V.K. Rao v. Dentu Bhaskara Rao) in support of his contention that term in a lease deed where it is provided that Government has right to purchase the goods manufactured, is not a contract for sale of goods. In the said decision, a mining lease was the subject-matter of consideration. In the said lease-deed in clause-21 it was provided that State Government has right of pre-emptious of minerals extracted in control of the lease which by notice

in writing being given by the State Government would be sold by the lessee to the Government at market rate prevailing. It was observed by the Supreme Court:

"...Clause 21 speaks of a right of the Government to pre-empt the minerals and all products thereof laying in or around the land demised or elsewhere under the control of the lessee. There is, however, no concluded contract in respect to any goods because it hardly needs to be said that relying upon this clause, the lessee cannot begin delivery of the ore to the Government. He can do so only if the Government serves a notice on him stating the quantity pre-empted and the time within which the supply is to be made. The clause, however, does not make it obligatory on Government to pre-empt any quantity of mineral or at all. There is no obligation to buy, nor is there any compulsion on the part of the lessee to sell unless asked. In these circumstances, the clause does no more than to keep intact a right of the Government to obtain the minerals or their products as and when Government requires in preference to others. Till Government makes up its mind and serves a notice there is no obligation to make any deliveries and even though the word 'subsists' is a word of wide import, it cannot be said that a contract for the sale of goods subsists because a contract requires an offer and its acceptance and is not a mere reservation of a right.

Taking the most liberal view of the matter it is clear that clause 21 did not bring into being a contract for the supply of goods. All that it did was to reserve to the Government the right to prior purchase of the minerals raised by the respondent. The reservation of such right does not amount to a contract for the supply of goods which can be said to subsist between the parties....."

24. Mr. Murty distinguished the decision by stating that terms in clause 21 of the minerals leased and terms in clause 20 of Ext. 1 are different. In the decision of Supreme Court, a notice is necessary which is not provided for in clause 20 of Ext. 1 and accordingly, decision of the Supreme Court has no application.

25. Supreme Court has laid down that for a completed contract it is required that each party to the contract shall have right and obligations which can be enforced. As in the decision of Supreme Court, the manufacturer of mineral had no enforceable right to compel Government to purchase and obligation of Government to purchase did not arise until notice is given, in Ext. 1 also Government only reserved the right to purchase the Government stock. If Government does not purchase, opposite party No. 1 cannot enforce such right. Absence of specific notice does not make any difference. Distinction made by Mr. Murty is not a material distinction to affect the conclusion that clause 20 in Ext. 1 does not envisage a completed contract for sale of goods. Ratio of the decision of Supreme Court directly applies to this clause also.

26. Various decisions have been cited by learned counsels for both the parties. However, decision of the Supreme Court reported in 26 E.L.R. 310 (supra) being a binding decision on the question, the other decisions are not required to be considered by me for academic purpose only.

27. In view of the discussion made above, issue No. 4 is answered against the petitioner.

28. Issue Nos. 6 and 7.—No submission was made in respect of these two issues and accordingly, I hold that the issues are not pressed.

29. Issue No. 5.—In view of the aforesaid discussion election of respondent No. 1 is not liable to be set aside.

30. In conclusion:

- (a) public notice under Section 31 of the Act (Ext. 2) was given on 23-10-1989 and is valid.
- (b) Clause 20 in the lease deed (Ext. 1) is not a subsisting contract of sale of goods between opposite party No. 1 and Central Government.

ORDER

In the result, there is no merit in the election petition which is accordingly, dismissed with costs.

Sd/- S. C. MOHAPATRA

List of witness examined on behalf of petitioner.

P.W.1.—Hrudaya Ranjan Mekap

List of witness examined on behalf of opp. party No. 1

D.W.1.—Sri Ramesh Chandra Patnaik.

List of documents exhibited for petitioner.

Ext. 1.—Certified copy of lease deed dated 2-8-1975 bearing document No. 1365 of 1976.

Ext. 2.—Copy of public notice in Form I in English of 11—Berhampur Parliamentary Constituency.

Ext. 3.—Wireless message No. 14341 dated 18-10-1989 from Chief Electoral Officer, Bhubaneswar to Collector, Ganjam.

Ext. 4.—Wireless message No. 14542 dated 19-10-1989.

Ext. 5. Office copy of letter No. 842 dated 20-10-1989 from District Election Officer, Ganjam to Sub-Collectors.

Ext. 6.—Wireless message No. 14465 dated 19-10-1989 from Chief Electoral Officer, Bhubaneswar

List of documents exhibited for Opposite Party No. 1.

Ext. A.—Note of District Election Officer in File No. VI—23/89-1/90 to Collector.

Ext. A/1.—Order of Collector dated 20-10-1989

Ext. A/2.—Note of Officer-in-Charge, Election dated 20-10-1989.

Ext. A/3.—Signature of approval by District Electoral Officer dated 21-10-1989.

Ext. B.—Circular of Chief Electoral Officer, Orissa to all Collectors (Returning Officers)/District Election Officers in cyclostyle copy of programme bearing letter No. 14541 dated 19-10-1989.

Ext. B/1.—Collector's note in margin of Ext. B.

Ext. C.—Copy of notice in Form In in English for Election in 11 Berhampur Parliamentary Constituency.

Ext. C/1.—Endorsement of Office-in-Charge, Election in Ext. C.

Ext. D.—Copy of notice in Form I in Oriya in respect of 11 Berhampur Parliamentary Constituency.

Ext. D/1.—Endorsement of Officer-in-Charge, Election in Ext. D.

Ext. E.—Office copy of wireless message with office copy of postal confirmation in memo No. 877 dated 24-10-1989.

Ext. F.—Letter No. 13723 dated 23-10-1989 of Sub-Collector, Chumsur, Bhanjanagar to District Electoral Officer.

Ext. G. Letter No. 18463 dated 23-10-1989 from Sub-Collector, Berhampur, Ganjam to District Electoral Officer.

Ext. H.—Letter No. 2193 dated 23-10-1989 from Executive Officer, Notified Area Council, Aska. to District Election Officer, Ganjam.

Ext. I.—Letter No. 15640 dated 24-10-1989 from Sub-Collector, Chatrapur to District Election Officer, Ganjam.

Ext. J.—Wireless message from Sub-Collector, Parlakbhemundi dated 25-10-1989 to District Election Officer, Chatrapur.

S. C. MOHAPATRA, Judge

Orissa High Court, Cuttack.

Dated, the 20th September, 1990.

[No. 82/OR-HP/1/90]

BALWANT SINGH, Secy.

नई दिल्ली, 11 जनवरी, 1991

भा. प्र. 21.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग, त्रिपुरा सरकार के परामर्श से श्री श्यामल घोष, आई. ए. एस. के स्थान पर श्री एस. एस. शर्मा, आई. ए. एस., प्रधान सचिव, त्रिपुरा सरकार को उनके कार्य भार सम्भालने की तारीख से अगले आदेशों तक त्रिपुरा राज्य के मुख्य निर्वाचन अधिकारी के रूप में एतद्वारा नामनिर्देशित करता है।

[सं. 154/त्रिपुरा/90]

आदेश से,

के. पी. जी. कुट्टी, सचिव

New Delhi, the 11th January, 1991

O.N. 21.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, in consultation with the Government of Tripura hereby nominates Shri S. S. Sharma, IAS, Principal Secretary to the Govt. of Tripura, as the Chief Electoral Officer for the State of Tripura with effect from the date he takes over charge and until further orders vice Shri Shyamal Ghosh, IAS

[No. 154/TP/90]

By Order,

K. P. G. KUTTY, Secy.

नई दिल्ली, 17 जनवरी, 1991

भा. प्र. 22.—निर्वाचन आयोग 1990 को निर्वाचन अधीन सं. 6-1990 का 1 (एस एच) में उच्च न्यायालय गुवाहाटी (शिलांग बेंच) के तारीख 12 दिसम्बर, 1990 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में प्रकाशित करता है।

(संलग्न आदेश अंग्रेजी में छापे हैं)।

[सं. 82/मैसालय-रा. स./1(एसएच)/90]

आदेश से,

मी. धार. ग्रहमम, अवर सचिव

New Delhi, the 17th January, 1991

O.N. 22.—In pursuance of Section 106 of the Representation of the People Act 1951 (43 of 1951), the Election Commission hereby publishes the Judgement of the High Court of Guwahati (Shillong Bench) dated the 12th December, 1990 in Election Petition No. 6 of 1990. 1(SH) of 1990.

IN THE GAUHATI HIGH COURT

THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH

Election Petition No. 6 of 1990 1 (SH) of 1990

Shri Jerlie E Tariang. . . Petitioner.

Versus

Shri GG Swell,

..Respondent

PRESENT :

HON'BLE MR. JUSTICE MANISANA

For the petitioner.—Mr. K. B. Paul Mr. T Roy, Advocates.

For the respondent.—Mr. B. M. Mahanta Mr. B. Endow, Advocates.

Dates of hearing.—4-12-90 and 5-12-90.

Date of judgment.—12-12-90.

JUDGMENT

In this election petition, the petitioner Jerlie E. Tariang has challenged the election of the respondent Shri G. G. Swell to the Council of States (Rajyasabha) from the State of Meghalaya.

2. In the election held on 29-3-90, the respondent Shri G. G. Swell was declared to have been elected to the Council of States. The petitioner was set up by Congress(I) and the respondent was sponsored by the Hill State People's Democratic Party. The petitioner Jerlie E. Tariang presented the election petition calling in question the election of the respondent Shri G. G. Swell on the ground that Shri Swell committed corrupt practice as is defined under sub-section (4) of section 123 of the Representation of the People Act, for short 'the Act'. The case of the election petitioner is that the respondent Shri Swell and other persons with his consent published false statement of fact, and which he believed to be false, in relation to the personal character and/or conduct of the petitioner, being a statement reasonably calculated to prejudice the prospect of the election of the petitioner. The respondent Shri Swell resisted the petition by filing written statement. Four issues were framed and one of the issues was : "Whether there is any cause of action?" This issue is taken up as preliminary issue.

5. After hearing the learned counsel for the parties at some length, the learned counsel for the petitioner has confined himself to the following allegations made in the petition :—

- (a) "The respondent Shri G. G. Swell falsely and wrongfully published that the MPCC(I) president Mr. J. E. Tariang (the election petitioner) had committed to bring eight members from the Congress (I) for making the toppling game a successful one' in furtherance of his deliberately motivated clandestine endeavour to assassinate the character of his opponent and to exert undue influence on the electorate to ensure withdrawal of support by the ruling UMPF MLA's and the said false and baseless statement of the respondent-1 Mr. Swell was published in the Shillong Times, dated March 20, 1990," (words within brackets supplied).
- (b) "That the humble Petitioner begs to state that respondent No. 1 Mr. Swell and other persons, with his consent have falsely tarnished the name, integrity, reputation and respectability of your humble petitioner believing and knowing fully well that the said fact are false and/or not believing the said fact of involvement in the toppling game to be true, being a statement calculated to exert undue influence on the electors and to prejudice the prospects of your humble petitioner's election."
- (c) "The main line of action of Respondent No. 1 was to assassinate the character of your humble Petitioner and also to create a confusion and chaos amongst the MLAs supporting his candidature regarding his conduct and integrity by falsely implicating his name in defection and Government toppling activities and exerting undue influence in the electors and by adoption of the said corrupt practice, the Respondent No. 1 succeeded."
- (d) "The respondent-1 Shri G. G. Swell further issued a press statement on March 22nd, 1990 which was published in the Meghalaya Guardians, Shillong dated 23rd March 1990 which inter alia, say : 'The opposition candidate for the Rajya Sabha polls Prof. G. G. Swell on Thursday claimed in a telephonic conversation with the Meghalaya Guardian that he had documentary proof to substantiate the reported commitment made by J. E. Tariang to

bring out eight Congress (I) MLAs to topple the Government."

- (e) "When a Shillong Times reported approached Mr. Swell on Friday for furnishing the evidence, he said he would not pursue the matter at 'this stage'. The statement was published in Shillong Times dated 25th March, 1990."

4. It may be mentioned here that, in the petition, it is stated that at the relevant time the ministry in Meghalaya was led by Shri PA Sangma of the United Meghalaya Parliamentary Front (UMPF). Motion of no confidence was to be discussed or debated on 26-3-90. The game of respondent Shri Swell brought fruit as 21 MLAs of UMPF resigned on the night of 25th March 1990 and they constituted themselves a political party under the name and style of UMPF (B) and elected Shri BB Lyngdoh as their leader. The newly formed political party UMPF (B) merged with the Regional Democratic Front and formed the Meghalaya United Parliamentary Party, and then formed a new ministry on 26-3-90 by toppling the ministry led by Shri Sangina.

5. The question which arises for consideration is whether the allegations quoted above disclose cause of action.

6. Before dealing with the question I consider it necessary to state the settled proposition of law with regard to the "material facts and particulars"—

- (1) Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court can give a direct verdict in favour of the election petitioner on the basis of the facts pleaded in the petition in case the returned candidate has not appeared to oppose the election petition (see *Manubhai Nandalal Amarsey Vs. Popatlal Manilal Joshi*, (1969) 3 SCR 217 : AIR 1969 SC 734). The material facts are those facts necessary to formulate a complete cause of action. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad (see *Samant Vs. George Fernandez*, AIR 1969 SC 1201).
- (2) The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Merely repeating the words of the statute does not amount to a proper statement of facts and particulars of corrupt practices, is, a petition which merely cites section cannot be said to disclose a cause of action (see AIR 1969 SC 1201, *Samant Vs. George Fernandez*). Particulars are the details of the case set up by the parties. "particulars" within the contemplation of clause (b) of section 83(1) are all details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a) of section 83 (1) (see *Udhov Singh Vs. Madhav Rao*, AIR 1976 SC 744).
- (3) With regard to the consent of the returned candidate or his election agent, there must be averment in the petition facts showing that it was with the consent of the returned candidate or his election agents, i.e. facts showing how it was said that it was with the consent of the returned candidate or his election agent must be pleaded, for example, whom the returned candidate gave consent how and in what manner consent was given and when and in whose presence the consent was given (see *Azhar Hussain Vs. Rajiv Gandhi*, AIR 1986 SC 1253).

7. Keeping the above principle in view, let me now examine the case on hand. The allegation contained in clause (a) is that the respondent Shri Swell published a false statement of fact and the said false statement was published in the Shillong Times dated 20 March 1990. On perusal of the Shillong Times published on 20 March 1990 (Annexure-I to the petition), it indicates that the publication was neither a statement nor was it a publication, made by the respondent Shri Swell. It was a news or what was reported. Under section 123(4) of the Act, there must be publication of any statement of fact and that publication is to be made by the candidate or by his agent with his consent. In that view of the matter, the allegation in clause (a) does not disclose a cause of action.

Mr. K. B. Paul, the learned counsel for the petitioner has, however, contended that the publication was made with the consent of the respondent Shri Swell. But, it has not been stated in the petition to whom the respondent gave consent, in what manner and how the consent was given, and when and in whose presence the consent was given as to make respondent understand the case he has to meet. In the absence of such particulars, it cannot be said that material facts have been pleaded or full particulars have been set forth to present a full picture of the cause of action. Therefore, the contention of Mr. Paul cannot be accepted. That apart, it has not been stated in the petition the date, time and place of making the alleged statement made by the respondent Shri Swell, as provided under section 83(1)(b) of the Act, therefore, the pleading is so vague that it left a wide scope to the petitioner to adduce evidence in respect of the alleged statement of fact at any place and time on any date that he found convenient. In *Nihal Singh Vs. Rao Bidendra Singh*, (1970) 3 SCC 239, it has been observed :—

“.....The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this Point.....” (Emphasis added).

The principle laid down by the Supreme Court in the above case will be attracted in the present case. For these reasons, the allegation contained in clause (a) is so vague and it does not disclose a cause of action.

Apart from the above reasons, under section 123(4), the statements must relate to the personal character and/or conduct of the petitioner, and that the statements must be one being reasonably calculated to prejudice the prospect of the election of the petitioner. The allegations in clause (b) are submissions and repetition of the words of the statute under section 123(4). The allegations in clause (c) is that the publication was to assassinate the character of the petitioner and to create confusion and chaos amongst the MLAs supporting his candidature by falsely implicating the petitioner's name in the defection and toppling activities. In clause (a) it is stated that the publication was to assassinate the character or conduct of the petitioner and exert undue influence on the electorate to ensure withdrawal of support by rulling MUPF MLAs. The alleged statements in clauses (a) and (c) relate to the toppling of the ministry led by Shri P. A. Sangma and its effect to the election. In fact, the ministry was toppled and a new ministry led by Shri B. B. Lyngdoh was formed in the State of Meghalaya before the election. The use of the word ‘assassinate’ denotes “political reasons”. At the relevant time, the petitioner was the President of the Meghalaya Pradesh Congress Committee (I). Eight members deserted the political party, viz, Congress (I), for the purpose of toppling the ministry and formation of a new ministry and other natural consequences. Considering these circumstances, I am of the view that the alleged statement of fact relates to the political character, not the personal character or conduct, of the petitioner as the President of Congress (I). This being the position, even if false statement is made with regard to the public or political character of a candidate, it would not constitute corrupt practice within section 123(4), although it is likely

to prejudice the prospect of the election of that candidate, (see *Bansilal Vs. Rishi Kumar*, AIR 1971 SC 1262). Over and above, it is not stated in the petition as to how the statement was one reasonably calculated to prejudice the prospect of the election of the petitioner. Mr. K. B. Paul, has contended that the statement was to create a confusion and chaos amongst the MLAs supporting the petitioner as is stated in clause (c). The allegation made thereunder are vague for want of material particular to present a full picture of the cause of action. It appears that the petitioner does not know himself as to how it would prejudice his election.

8. With regard to the allegations in clauses (d) and (e), a reading of the ‘Meghalaya Guardians’ published on 23 March 1990 (Annexure II to the petition) and the ‘Shillong Times’ published on 25 March 1990 (Annexure III to the petition) reveals that the alleged publications of statement of fact were not the statements made by the respondent Shri Swell nor were publication by him. They were news or what were reported. Be that as it may, the facts in the alleged statements as they are, they are of subsequent events which may be relevant as evidence to prove the allegations made in clause (a). But every pleading shall contain, and contain only, a statement in a concise form of material facts, but not the evidence by which they are to be proved. The allegations in clauses (c) and (d) are in nature of evidence and, therefore, they are not material facts, nor they are material particulars. In that view of the matter, those allegations cannot be said to form a part of the cause of action.

9. For the foregoing reasons, the allegations are vague and do not constitute or disclose a cause of action and, therefore, the election petition is liable to be rejected under O.7. r. 11, CPC. Accordingly, the petition is rejected. No costs. The Registry shall communicate this order to the concerned authorities in terms of section 103 of the Act.

MANISANA, Judge

No. 82/MEG-CS/I(SH)/90]

C. R. BRAHMAM, Under Secy.

नई दिल्ली, 21 जनवरी, 1991

भा. म. 23.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग, संघ राज्य-क्षेत्र अण्डमान व निकोबार द्वीप समूह के प्रशासक के परामर्श से श्री गोरख राम, आई. ए. एस. के स्थान पर श्री टकप रिंगू, आई. ए. एस. मुख्य सचिव को उनके कार्य भार सम्भालने की तारीख से अगले आदेशों तक उस संघ राज्य-क्षेत्र के मुख्य निर्वाचन अधिकारी के रूप में एनद्दारा नामनिर्दिष्ट करता है।

[सं. 154/अण्डमान निकोबार द्वीप समूह/91]

आदेश से,
के. पी. जी. कुट्टी, सचिव

New Delhi, the 21st January, 1991

O.N. 23.—In exercise of the powers conferred by sub-section (1) of section 13-A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Administration of the Union Territory of Andaman & Nicobar Islands hereby nominates Shri Takap Ringu, IAS, Chief Secretary as the Chief Electoral Officer for the Union Territory of Andaman & Nicobar Islands with effect from the date he takes over charge and until further orders vice Shri Gorakh Ram, IAS.

[No. 154/ANI/91]

By Order,

K. P. G. KUTTY, Secy.